IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6737 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made

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5. Whether it is to be circulated to the Civil Judge? : NO

BHARWAD RAJUBHAI VIHABHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR SATISH R PATEL for Petitioner

MR ST MEHTA ASSTT GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/01/2000

ORAL JUDGEMENT

#. Heard Mr.S.R.Patel, learned advocate for the petitioner and Mr.S.T.Mehta, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 11-4-1999 passed by respondent No.1 - The District Magistrate, Bhavnagar District against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention supplied to the detenu under Section 9(1) of PASA, a copy of which is produced at Annexure C discloses the fact that two prohibition cases dated 23-2-99 and 24-2-99 respectively are registered at Gadhada police station against the petitioner and in each of the case, Indian made Foreign Liquor was seized from the possession of the petitioner. It also discloses the fact that 4 witnesses have given statements against the petitioner in respect to prejudicial activities of the petitioner. The statements are recorded on 26-3-99 and contained the facts of the incident dated 19-1-99, 5-2-99, 12-2-99 and 28-2-99 respectively. The said statements are given by the witnesses on assurance of their anonymity which were verified by the detaining authority and in consideration of the material of registered criminal cases as well as the statement of anonymous witnesses, respondent No.1 has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of Act that resort to general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended on behalf of the petitioner that the impugned order is invalid on account of non application of mind of the detaining authority. It is submitted that last offence registered against the petitioner is dated 24-2-99, while the impugned order is passed on 11-4-99, thereby, there is considerable delay in taking the impugned action. Furthermore, the verification of statement of anonymous witnesses, a copy of which supplied to the detenu discloses that the detaining authority has only put his initial which does not disclose any fact that the detaining authority himself has verified the said statement. Thus, the privilege claimed by the detaining authority in respect of details of anonymous witnesses under Section 9(2) of PASA is not genuine.

#. On appreciation of the facts and circumstances of the case, it appears that the statement of anonymous

witnesses were recorded by PSI, Gadhada below which illegible signature of District Magistrate, Bhavnagar appears to have been endorsed except that there is no material on the copy of the statement to show that respondent No.1 - District Magistrate, Bhavnagar had called the witnesses and verified the fact stated and also verified the apprehension shown by the witnesses.

#. In the matter of JAKIRBHAI RAHIMBHAI NAGORI VS. DIST. MAGISTRATE MEHSANA AND OTHER 1996 (1) GLR page 81, this court has expressed the view that the detaining authority himself should verify the apprehension of witnesses before the claiming the privilege under Section 9(2) of PASA. The Court having referred to earlier judgment of Division Bench rendered on 12th September, 1994 in the matter of KOLI ASHWIN VS STATE OF GUJARAT in Special Criminal Application No : 1812 of 1993 has held that if the statement is not personally verified by the detaining authority to form the subjective satisfaction in respect to apprehension shown by the witnesses, the claim of privilege under Section 9(2) of PASA cannot be justified as genuine claim. That such privilege if claimed without justification would amount to violating the mandate under Article 22(5) of the Constitution preventing the detenu from making effective representation which would render the detention order invalid.

#. In the instant case as stated hereinabove, the scrutiny of papers clearly suggests that witnesses whose statements are recorded and for which, privilege under Section 9(2) is claimed were not personally verified by calling the witnesses but only the signature of the detaining authority is endorsed below the statements. That in absence of any explanation either in the impugned order or by filing any affidavit in reply, the contention raised on behalf of the petitioner has to be accepted. That privilege claimed for anonymous witnesses. In the instant case, not being genuine has rendered the order invalid on account of the violation of mandate under Article 22(5) of the Constitution of India.

#. Furthermore, no explanation is found either in the impugned order or by filing any affidavit in reply regarding the unexplained delay in passing the impugned order on 11-4-99 when last registered case against the petitioner / detenu was registered on 24-2-99.

#. That in the matter of PRADEEP NILKANTH PATARKER VS STATE OF MAHARASTHRA reported in AIR 1994 SC 656 , the Hon'ble Apex Court has held that unexplained delay in

taking action against the detenu for period from the date of prejudicial activities on which the detention order is passed is fatal and render the order invalid. That the said proposition of law has been reiterated by this Court. In the matter of ELESH PATEL VS. COMMISSIONER OF POLICE, AHMEDABAD CITY reported in 1997 (1) GLH page 381. Following the said dicta, in the instant case, I am constrained to hold that the detaining authority having failed to explain the delay in taking impugned action, order of detention cannot be said to be in proximate in time to the alleged prejudicial activities of the petitioner / detenu on account of snapping of live link between the same and thereby also, the impugned order is bad in law.

##. As the petition succeeds on the aforesaid grounds alone, there is no need to consider and decide the other grounds raised by the petitioner in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 11-4-1999 passed by respondent No.1 - District Magistrate, Bhavnagar against the petitioner is hereby quashed and set aside. The petitioner Bharwad Rajubhai Vihabhai is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 10-1-2000 [A.K.Trivedi, J.]
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